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September 25, 2002

IN REGULATORY AUTHORITY  
DOCKET ROOM

**VIA FEDERAL EXPRESS**

Ms. Charlotte Dillon  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

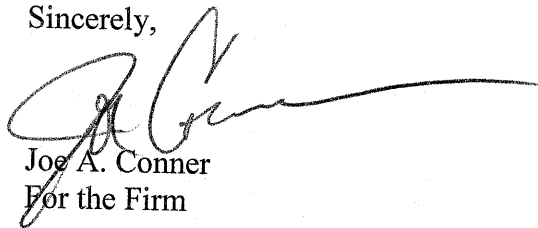
Re: United Cities Gas Company, a Division of Atmos Energy Corporation Incentive Plan  
Account (IPA) Audit; Docket No. 01-00704

Dear Ms. Dillon:

Pursuant to my secretary's telephone conversation with Shirley in your office, enclosed are fourteen copies of Exhibit A to United Cities Gas Company's Motion to Compel Further Response By The Office Of The Attorney General Consumer Advocate And Protection Division To The First Data Requests From United Cities Gas Company which were inadvertently omitted at the time the motion was filed with your office on September 24, 2002. We would greatly appreciate your assistance in seeing that the copies of this exhibit are attached to the copies of the motion which were provided at the time of filing.

If you should have any questions, please do not hesitate to contact me.

Sincerely,



Joe A. Conner  
For the Firm

JAC:ldg

Enclosures

Ms. Charlotte Dillon

September 25, 2002

Page 2

cc: Ms. Sara Kyle, Chairman, with enclosure  
Mr. Richard Collier, with enclosure  
Mr. Russell T. Perkins, with enclosure  
Mr. Timothy C. Phillips, with enclosure  
Ms. Shilina B. Chatterjee, with enclosure  
Mr. Jon Wike, with enclosure

**IN THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

IN RE:

UNITED CITIES GAS COMPANY, a  
Division of ATMOS ENERGY  
CORPORATION INCENTIVE PLAN  
ACCOUNT (IPA) AUDIT

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DOCKET NO. 01-00704

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**RESPONSE TO FIRST DATA REQUEST FROM UNITED CITIES GAS COMPANY  
TO THE OFFICE OF THE ATTORNEY GENERAL  
CONSUMER ADVOCATE AND PROTECTION DIVISION**

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The Tennessee Office of the Attorney General, through the Consumer Advocate & Protection Division ("Attorney General"), files its Responses and Objections to United Cities Gas Company's ("UCG") First Data Request. The Attorney General responds as follows:

1. With respect to Pages 3 and 4 of the Memorandum in Support of Motion for Partial Summary Judgment ("Memorandum"), identify any legal and/or factual basis for your contention that there is no factual dispute as to the material facts numbered 1, 2 and 3.

**RESPONSE:** The Attorney General objects to UCG's request to "identify any legal and/or factual basis" because this aspect of the request is not reasonably calculated to lead to the discovery of admissible evidence and is also objectionable to the extent that the request may be requesting the Attorney General to turn over legal research, confidential and privileged communications between co-counsel, or work product of employees of the Attorney General. Additionally, with respect to the factual part of the request, the Attorney General respectfully contends that it is overbroad and cumulative because the Attorney General is relying on the factual record implicit in the detailed motion for summary judgment.

Notwithstanding these objections and without waiving them, the Attorney General responds as follows: The Memorandum in Support of Motion for Partial Summary Judgment, Final Order on Phase Two in Docket 97-01364<sup>1</sup>, United Cities Gas' tariff set forth the relevant facts as to the issues in this docket. Moreover, the relevant facts set forth in the record in Docket Nos. 97-01364 and 01-00704 establish that there is no dispute as to the material facts in this matter.

2. Identify the factual basis of and any and all documents which refer and/or relate to the statement on Page 13 of the memorandum that "UCG considered transportation delivery costs and they considered them to be incidental to commodity costs."

**RESPONSE:** After making a reasonable inquiry to provide a meaningful response to this request while not representing that this answer is an exhaustive listing of every conceivable fact that may be responsive to this request, the Attorney General responds as follows: The transcript in Docket 97-01364 and the Final Order on Phase Two in that docket provide ample evidence that transportation delivery costs were considered incidental to commodity costs. For example, see the transcript in Docket 97-01364 Vol. 3 p. 692, lines 19-21, Mr. Woodward (UCG'S Expert Witness) testified: "So the transportation charge that we refer to is a commodity charge, is the rate that's actually charged for the movement of the gas." Also, on page 28 of the Final Order on Phase Two in that docket, the Authority ordered: "The five incentive mechanisms of gas procurement, seasonal price differential, storage gas commodity, transportation capacity cost and storage capacity cost are collapsed into two - mechanisms - Gas Commodity and Capacity

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<sup>1</sup> In Re: Application of United Cities Gas Company to Establish an Experimental Performance-Based Ratemaking Mechanism, Docket No. 97-01364, Final Order Phase Two, August 16, 1999.

Release Sales.”

3. Identify the factual basis of and any and all documents which refer and/or relate to the statement made on Page 13 of the Memorandum that the indices already included the effect of transportation prices.

**RESPONSE:** After making a reasonable inquiry to provide a meaningful response to this request while not representing that this answer is an exhaustive listing of every conceivable fact that may be responsive to this request, the Attorney General responds as follows: The testimony of UCG's expert witness, Frank Creamer as stated on Page 14 of the Memorandum in Support of Motion for Partial Summary Judgment states that the basket of indices used are widely recognized by UCG in the industry and they include transportation prices. As stated, it is a proxy and the best way to judge a company's performance. Without waiving this objection and subject thereto, the Attorney General does not have specific factual documentation that categorically states that the transportation prices are included in the indices since there is no documentation available in the industry that specifically states that transportation prices are included in the indices; however it is a fact that is widely recognized by UCG and others within the industry and common knowledge.

4. With respect to Page 14 of the Memorandum, identify the factual basis of and any and all documents which refer and/or relate to the statement that “At the time the PBR was filed with the TRA, UCG had no intention of including negotiated transportation discount contracts and did not incorporate them into the PBR.”

**RESPONSE:** After making a reasonable inquiry to provide a meaningful response to this request while not representing that this answer is an exhaustive listing of every conceivable fact

that may be responsive to this request, the Attorney General responds as follows: Page 28 of the Final Order on Phase Two in Docket No. 97-01364 wherein the Authority ordered: "The five incentive mechanisms of gas procurement, seasonal price differential, storage gas commodity, transportation capacity cost and storage capacity cost are collapsed into two - mechanisms - Gas Commodity and Capacity Release Sales" Also, UCG's tariff specifies that the PBR will consist of these two parts (1) Gas Procurement Incentive Mechanism and the Capacity Management Mechanism. Since the original five were collapsed into two, it is a reasonable conclusion that the two parts include the negotiated transportation discount contracts because they were not specifically mentioned in the tariff to be separate and distinct from these two mechanisms.

5. Identify the factual basis of and any and all documents which support the statement on Page 7 of the Memorandum that "UCG decided that they would not deal with the transportation costs separately in the IPA."

**RESPONSE:** After making a reasonable inquiry to provide a meaningful response to this request while not representing that this answer is an exhaustive listing of every conceivable fact that may be responsive to this request, the Attorney General responds as follows: Tariff of United Cities Gas Company, A Division of Atmos Energy Corporation, TRA No. 1, 1<sup>st</sup> Revised Sheet No. 45.2, Canceling Original Sheet No. 45.1, Issued by Thomas R. Blose, Jr., President, Date Issued March 16, 1999, Effective Date: April 1, 1999 at Original Sheet No. 45.2. states that the indices were adjusted for the avoided transportation costs for city gate purchases.

6. Identify the factual basis of any and all documents which refer and/or relate to the statement on Page 13 of the Memorandum that "The formulas do not provide for any additional transportation calculations to be included."

**RESPONSE:** After making a reasonable inquiry to provide a meaningful response to this request while not representing that this answer is an exhaustive listing of every conceivable fact that may be responsive to this request, the Attorney General responds as follows: Tariff of United Cities Gas Company, A Division of Atmos Energy Corporation, TRA No. 1, 1<sup>st</sup> Revised Sheet No. 45.2, Canceling Original Sheet No. 45.1, Issued by Thomas R. Blose, Jr., President, Date Issued March 16, 1999, Effective Date: April 1, 1999.

7. Identify the factual basis of and any and all documents which refer and/or relate to the statement on Page 14 of the Memorandum that "At the time the PBR was filed with the TRA, UCG had no intention of including negotiated transportation discount contracts and did not incorporate them into the PBR."

**RESPONSE:** After making a reasonable inquiry to provide a meaningful response to this request while not representing that this answer is an exhaustive listing of every conceivable fact that may be responsive to this request, the Attorney General responds as follows: Tariff of United Cities Gas Company, A Division of Atmos Energy Corporation, TRA No. 1, 1<sup>st</sup> Revised Sheet No. 45.2, Canceling Original Sheet No. 45.1, Issued by Thomas R. Blose, Jr., President, Date Issued March 16, 1999, Effective Date: April 1, 1999 at Original Sheet No. 45.2. UCG's tariff specifically states what comprised the performance based ratemaking mechanism and it was to be adjusted for refunds or surcharges by the pipeline and storage suppliers. There is no indication that negotiated transportation discount contracts were to be treated separately and distinctly and incorporated into the performance based ratemaking mechanism at a later date. Further, the previous filing of UCG's Incentive Plan Account for the prior plan year did not include the negotiated transportation discount contracts that are included in the current docket.

8. Identify the legal authority which supports the statement on Page 16 of the Memorandum that "As a matter of law, the TRA is not required to object to quarterly reports."

**RESPONSE:** The Attorney General objects to UCG's request to "Identify the legal authority" because this aspect of the request is not reasonably calculated to lead to the discovery of admissible evidence and is also objectionable to the extent that the request may be requesting the Attorney General to turn over legal research, confidential and privileged communications between co-counsel, or work product of employees of the Attorney General. Additionally, with respect to the factual part of the request, the Attorney General respectfully contends that it is overbroad and cumulative because the Attorney General is relying on the factual record implicit in the detailed motion for summary judgment.

Notwithstanding the foregoing objection and without waiving it and in the interest of avoiding a needless dispute on this request which is clearly not calculated to lead to the discovery of admissible evidence (or even material which is even factual in nature), the Attorney General provides the following responses: The Tennessee Regulatory Authority has broad power over all public utilities in the State of Tennessee. Tennessee Code Annotated §§ 65-4-104, 65-4-117 *et seq.* Specifically, Tennessee Code Annotated § 65-4-117(3) grants the TRA the authority to fix just and reasonable standards, classifications, regulations, practices or services upon any public utility. Tennessee Code Annotated § 65-4-117(4) states that the TRA can ascertain and fix adequate and serviceable standards for measurement of quantity, quality, pressure, voltage or other condition, related to any public utility. Thus, there is no requirement that the TRA must object to quarterly reports. There are no rules that provide that they are required to object to quarterly reports. Further, Tenn. Comp. R. & Reg. 1220-4-7-03(2) does not require the TRA to



object to quarterly reports. Also, Tennessee Code Annotated § 65-5-203 states that the authority has broad power concerning changes in utility rates, fares and schedules.

9. Identify the legal authority which supports the statement on Page 16 of the Memorandum that "Moreover, the TRA is not under an obligation to provide written notification to a public utility concerning objections or raise issues concerning quarterly report filings by utility companies."

**RESPONSE:** The Attorney General objects to UCG's request to "Identify the legal authority" because this aspect of the request is not reasonably calculated to lead to the discovery of admissible evidence and is also objectionable to the extent that the request may be requesting the Attorney General to turn over legal research, confidential and privileged communications between co-counsel, or work product of employees of the Attorney General. Additionally, with respect to the factual part of the request, the Attorney General respectfully contends that it is overbroad and cumulative because the Attorney General is relying on the factual record implicit in the detailed motion for summary judgment.

Notwithstanding the foregoing objection and without waiving it and in the interest of avoiding a needless dispute on this request which is clearly not calculated to lead to the discovery of admissible evidence (or even material which is even factual in nature), the Attorney General provides the following responses: Tenn. Comp. R. & Reg. 1220-4-7-03(2)

10. With respect to the statements made in the second paragraph on Page 17 of the Memorandum, identify the legal authority which supports your position that the TRA rules concerning the audit of gas purchases were waived by the TRA in the Final Order on Phase Two and therefore are not applicable to this proceeding.

**RESPONSE:** The Memorandum in Support of Motion for Partial Summary Judgment specified the legal authority. As stated therein, please refer to *In Re: Application of United Cities Gas Company to Establish an Experimental Performance-Based Ratemaking Mechanism*, Docket No. 97-01364, Final Order Phase Two, August 16, 1999.

11. Identify the factual basis of and any and all documents which refer and/or relate to the statement on Page 18 of the Memorandum that "Moreover, UCG never obtained oral or written advice from the TRA staff regarding approval of their quarterly reports."

**RESPONSE:** The record does not reflect that there was any action taken by UCG concerning oral or written advice from the TRA. Therefore, it is a reasonable conclusion that there was no approval affirmatively sought by UCG for their quarterly reports.

12. Identify the factual basis of and any and all documents which refer and/or relate to the statement on Page 19 of the Memorandum that "Essentially, UCG reformulated their PBR and hoped that the TRA would not discover the inconsistencies among their annual report, tariff and the Final Order."

**RESPONSE:** Based on the entirety of the record in Docket Nos. 97-01364 and 01-00704 and UCG's contentions in these proceedings, the above statement is a reasonable factual conclusion. Also, since UCG did not file the IPA as filed in the prior plan year, they failed to affirmatively seek approval of their quarterly reports and have not provided any factual or legal support on the relevant issues also leads to the above factual conclusion.

13. Identify the factual basis of and any and all documents which refer and/or relate to the statement on Page 19 of the Memorandum that, "UCG did not rely on any assertion of the TRA or detrimentally rely under the meaning of the common law."

**RESPONSE:** There is no evidence in the record in Docket Nos. 97-01364 and 01-00704 that UCG relied to their detriment in this matter under the common law meaning.

14. With respect to the Affidavit of Dr. Stephen N. Brown ("Dr. Brown"), identify the factual basis of and any and all documents which refer and/or relate to the documents which support the statement in Paragraph 7 that "Different pipelines have widely different maximum prices and each pipeline widely varies its maximum price according to the receipt and delivery points."

**RESPONSE:** After making a reasonable inquiry to provide a meaningful response to this request while not representing that this answer is an exhaustive listing of every conceivable fact that may be responsive to this request, the Attorney General responds as follows: FERC tariffs available at the FERC web site --

COLUMBIA GULF TRANSMISSION COMPANY Second Revised Volume No. 1

COLUMBIA GAS TRANSMISSION CORPORATION, SECOND REVISED VOLUME NO. 1

EAST TENNESSEE NATURAL GAS COMPANY, SECOND REVISED VOLUME NO. 1

TENNESSEE GAS PIPELINE COMPANY, FIFTH REVISED VOLUME NO. 1

TEXAS EASTERN TRANSMISSION CORPORATION, SIXTH REVISED VOLUME NO. 1

15. Describe in detail how Dr. Brown defines the words "receipt" and "delivery points."

**RESPONSE:** After making a reasonable inquiry to provide a meaningful response to this request while not representing that this answer is an exhaustive listing of every conceivable fact that may be responsive to this request, the Attorney General responds as follows: Dr. Brown did not define the terms receipt and delivery point. The terms are used in the tariff volumes referred to in the response to question 1.

16. Identify all documents and research that Dr. Brown referenced in Paragraph 7 from which

he draws his conclusion that he found maximum prices that range from 5 cents to nearly \$10.00, a huge difference.

**RESPONSE:** The documents are tariff volumes described in the RESPONSE to question 14. See Substitute Twelfth Revised Sheet No. 23A and Twenty-First Revised Sheet No. 23 in Tennessee Gas Pipeline Company, Fifth Revised Volume No. 1.

17. Produce all documents which reflect any analysis done by Dr. Brown or relied on by Dr. Brown in support of or in conjunction with the statements made in his affidavit.

**RESPONSE:** The tariff volumes referred to in question 14 are on the CD provided with this response. There are 5 subdirectories, 1 for each tariff volume referred to in question 14. Each subdirectory has a file named "Allinfo," which is in plain text. In addition, all data from the discount transportation rate reports are provided.

18. Identify all individuals with whom Dr. Brown consulted concerning the statements made in his affidavit and/or his research.

**RESPONSE:** None.

19. With respect to CAD's proposed witness Dan McCormac, state the subject matter on which he is expected to testify, the substance of the facts and opinions to which he is expected to testify, and a summary of the grounds for each opinion.

**RESPONSE:** All previously filed testimony in this matter in Dockets Nos. 97-01364 and 01-00704. It has not yet been determined the substance of the facts and opinions that Mr. McCormac will testify to because the Attorney General's Office has not attempted to interview Mr. McCormac given UCG's motion to exclude his testimony.

20. Identify each person whom you expect to call as an expert witness at the hearing

of this matter, and with respect to each person identified, state:

**RESPONSE:** See Witness List of the Consumer Advocate and Protection Division of the Office of the Attorney General filed on May 9, 2002 in Docket No. 01-00704.

(a) the subject matter on which the expert is expected to testify;

**RESPONSE:** As to Stephen N. Brown, please see prior testimony in Docket Nos. 97-01364 and 01-00704 and Affidavit of Stephen N. Brown. However, we reserve the right to supplement his testimony at a future date. As to Dan McCormac, we do not know the subject areas he will testify to since we have not had a chance to speak to him and interview him.

(b) the substance of the facts and opinions to which the expert is expected to testify; and

**RESPONSE:** As to Stephen N. Brown, please see prior testimony in Docket Nos. 97-01364 and 01-00704 and Affidavit of Stephen N. Brown. However, there may be additional facts and opinions that he may provide at the time of hearing. We reserve the right to supplement his testimony at that time.

(c) a summary of the grounds for each opinion.

**RESPONSE:** At this time, we do not have all opinions of the experts and are not able to provide a summary of the grounds for each opinion. However, we will provide a summary of the grounds at a later date.

21. Identify and produce any and all documents which reflect communications by and/or between the members of the TRA staff, including its legal counsel and the staff of the Attorney General, Consumer Advocate Division, which refer and/or relate to the matters at issue in Docket No. 01-00704.

of this matter, and with respect to each person identified, state:

**RESPONSE:** See Witness List of the Consumer Advocate and Protection Division of the Office of the Attorney General filed on May 9, 2002 in Docket No. 01-00704.

(a) the subject matter on which the expert is expected to testify;

**RESPONSE:** As to Stephen N. Brown, please see prior testimony in Docket Nos. 97-01364 and 01-00704 and Affidavit of Stephen N. Brown. However, we reserve the right to supplement his testimony at a future date. As to Dan McCormac, we do not know the subject areas he will testify to since we have not had a chance to speak to him and interview him.

(b) the substance of the facts and opinions to which the expert is expected to testify; and

**RESPONSE:** As to Stephen N. Brown, please see prior testimony in Docket Nos. 97-01364 and 01-00704 and Affidavit of Stephen N. Brown. However, there may be additional facts and opinions that he may provide at the time of hearing. We reserve the right to supplement his testimony at that time.

(c) a summary of the grounds for each opinion.

**RESPONSE:** At this time, we do not have all opinions of the experts and are not able to provide a summary of the grounds for each opinion. However, we will provide a summary of the grounds at a later date.

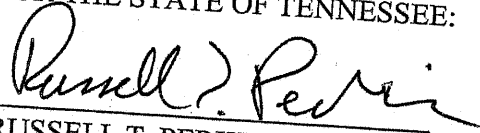
21. Identify and produce any and all documents which reflect communications by and/or between the members of the TRA staff, including its legal counsel and the staff of the Attorney General, Consumer Advocate Division, which refer and/or relate to the matters at issue in Docket No. 01-00704.

**RESPONSE:** Objection is made to this Request and the Attorney General asserts that the information and material sought is confidential and privileged. The Attorney General asserts the attorney-client privilege/common or joint defense privilege in this matter provided in Tennessee Code Annotated § 23-3-105. The Attorney General also asserts the work product doctrine under Tennessee Rule of Civil Procedure 26.02(3). Lastly, the Attorney General states that under Tennessee Code Annotated § 10-7-504(5)(A), any books, records or materials in the possession of the Office of Attorney General and Reporter that relate to any pending or contemplated legal or administrative proceeding in which the office is involved is not open for public inspection. Any work product of any attorney working under the Attorney General and Reporter's supervision and control is not open for public inspection.

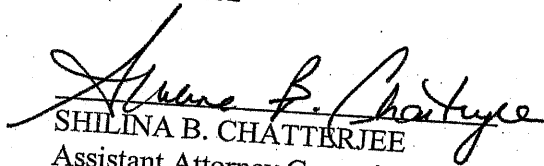
Additionally, objection is made to this Request in that it seeks information which is overly broad and burdensome.

Respectfully submitted,

FOR THE STATE OF TENNESSEE:



RUSSELL T. PERKINS  
Deputy Attorney General  
B.P.R. #10282



SHILINA B. CHATTERJEE  
Assistant Attorney General  
B.P.R. #20689  
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(615) 532-3382

## CERTIFICATE OF SERVICE

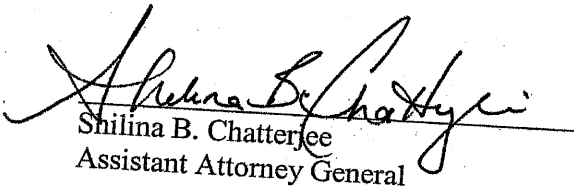
I hereby certify that a true and correct copy of the foregoing was served via facsimile, United Parcel Service Overnight Mail and/or hand delivery on September 6, 2002.

Honorable Sara Kyle  
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Shilina B. Chatterjee  
Assistant Attorney General